

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

NOVARTIS PHARMACEUTICALS  
CORPORATION

Plaintiff,

v.

ACCORD HEALTHCARE, INC., et al.,

Defendants.

CIVIL ACTION NO. 18-1043-KAJ

**[PROPOSED] FINAL JUDGMENT AND ORDER OF INJUNCTION**

WHEREAS, on July 16, 2018, Plaintiff Novartis Pharmaceuticals Corporation (“Plaintiff”) brought the above action (the “Action”) against Mylan Pharmaceuticals Inc. (“Mylan” or “Defendant”) (Plaintiff and Defendant are each referred to herein as a “Party” or collectively as the “Parties”), alleging infringement of U.S. Patent No. 9,187,405 (“the ’405 patent”) based on Mylan’s submission of ANDA No. 208005 for fingolimod 0.5 mg capsules;

WHEREAS, Plaintiff is also asserting or has asserted the ’405 patent against Mylan in *Novartis Pharmaceuticals Corporation v. Mylan Pharmaceuticals Inc.*, C.A. No. 1:19-cv-01118-LPS (D. Del.) and *Novartis Pharmaceuticals Corporation v. Mylan Pharmaceuticals Inc.*, C.A. No. 19-cv-128-TSK (N.D.W. Va.), collectively, with this action, “the Mylan Related Litigations”;

WHEREAS, on July 12, 2019, Plaintiff and Defendant agreed to terms and conditions representing a negotiated settlement of this action and have set forth those terms and conditions in a confidential Settlement and License Agreement (the “Settlement Agreement”);

WHEREAS, pursuant to the Settlement Agreement, Plaintiff and Defendant stipulated to stay all claims, defenses and/or counterclaims between Plaintiff and Defendant in the Mylan Related Litigations until entry of final judgment in this Action, and that, upon entry of final judgment in this Action, the stay between Plaintiff and Defendant shall be lifted, and final judgment shall be entered between Plaintiff and Defendant as if Defendant had fully participated in the adjudication of the claims and defenses alleged in the Action; and

WHEREAS, on September 11, 2020 (D.I. 780) the Court entered its final judgment in this Action.

IT IS ORDERED AND ADJUDGED that:

1. Judgment is entered that the accused product (the subject of Abbreviated New Drug Application No. 208005) infringes all claims of the '405 Patent asserted against Mylan in this Action.
2. This Final Judgment and Order of Injunction constitutes a “consent decree” pursuant to 21 U.S.C. § 355(j)(5)(B)(iii)(I)(bb), such that Final Approval of Mylan’s Abbreviated New Drug Application No. 208005 under 21 U.S.C. § 355(j)(2)(A)(vii)(IV) may be granted on the date that this Final Judgment and Order of Injunction is entered.
3. Pursuant to the terms of the Settlement Agreement, all other claims and counterclaims by Mylan or against Mylan are dismissed WITH PREJUDICE.
4. This Court retains jurisdiction over all disputes arising out of the Settlement Agreement.
5. Mylan, and its affiliates, are hereby enjoined from directly or indirectly passing title or delivering to customers in the United States the accused product (the subject of Abbreviated New Drug Application No. 208005) prior to the Generic Entry Date, as set forth in the Settlement Agreement.

6. The injunction described in the foregoing paragraph shall take effect immediately upon entry of this Final Judgment and Order of Injunction.
7. During the term of the injunction, the Court retains jurisdiction over this Action, including implementation of, or disputes arising out of, this Final Judgment and Order of Injunction.
8. Each Party shall each bear its and their own costs and attorney fees.
9. Novartis and Mylan each expressly waive any right to appeal or otherwise move for relief from this Final Judgment and Order of Injunction.

Dated: \_\_\_\_\_

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The Honorable Kent A. Jordan, Circuit Judge  
Sitting by Designation